

Theo T. Nikiforov, et al.  
Application No.: 09/854,417  
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#### EXAMINER INTERVIEW SUMMARIES

On May 29, 2003, Applicants undersigned attorney and the Examiner discussed the cited art, particularly Linn et al. (6,436,646). Agreement was reached that the cited art did not teach use of a positive or neutral label, and therefore, could not serve as an anticipatory reference. Further, the additional references do not remedy this deficiency. Accordingly, except for the requirement of a terminal disclaimer over Nikiforov (6,287,774) the claims were considered essentially allowable.

The Examiner then expanded his search and identified an additional reference for consideration, i.e., USP 5,716,784. Applicants considered the reference and had a second teleconference with the Examiner on June 4, 2003. As discussed and agreed to with the Examiner, the amended claims are clearly patentable over the '784 patent, because the '784 patent relies on *cleavage* of the label from the probe upon hybridization of a probe to a target nucleic acid for FP measurements (*see*, column 7). Thus, the relevant label is not present when hybridized to the nucleic acid, as required in the amended claims.

#### A TERMINAL DISCLAIMER IS ATTACHED

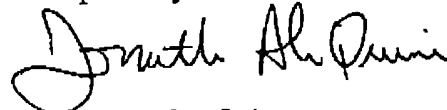
To expedite issuance, a terminal disclaimer over Nikiforov (6,287,774) and Nikiforov (6,436,646) is attached. Without commenting on the substance of the obviousness-type double patenting rejections over the '774 and '646 patents, Applicants note that the terminal disclaimer renders the rejection moot.

#### CONCLUSION

In light of the above amendments, the claims are in condition for allowance. A Notice of Allowance is respectfully requested. In the event that any issues of substance remain, please contact the undersigned.

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Respectfully submitted,

  
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**APPENDIX A****"MARKED UP" CLAIMS ILLUSTRATING THE AMENDMENTS MADE TO THE  
CLAIMS OF 09/854,417 WITH ENTRY OF THIS AMENDMENT**

1. (AMENDED) A method for detecting a nucleic acid, the method comprising:  
    contacting a first nucleic acid to a second nucleic acid, which second nucleic acid  
comprises a neutral or positively charged fluorescent label when hybridized to the first nucleic  
acid; and,  
    detecting fluorescence polarization of the resulting mixture of first and second  
nucleic acids.
  
25. (AMENDED) A method of identifying the presence of a subsequence of nucleotides in a  
target nucleic acid, the method comprising:  
    contacting the target nucleic acid sequence with a labeled nucleic acid probe,  
which labeled nucleic acid probe comprises a neutral or positively charged label comprising a  
fluorophore to form a first reaction mixture; and,  
    detecting the level of fluorescence polarization of the first reaction mixture, wherein the probe  
comprises the labeled fluorophore when hybridized to the target nucleic acid.